

Johnston vs. the Associated Students
Senate of the California State
College at Long Beach
Argued before and decided by
the Associated Students Judiciary
on February 25, 1966

Christopher J. (Rocky) Johnston, the Plaintiff, argued his own cause. Terry E. Dixon, Attorney General of the Associated Students, assisted by Gerald Heller, Chairman of the Associated Students Senate, argued the cause for the Associated Students Senate. With them on the brief was Garland L. Holt, Executive Research Commissioner.

Mr. Justice Hanna delivered the opinion of the court.

The Associated Students Senate passed by a vote of eleven to 3 (11 to 3) By-Laws Amendment Number Seven which changed the minimum cumulative G.P.A. (grade point average) requirement for appointment to the A.S. Senate from 2.0 to 2.25. The A.S. Senate acted under the authority and according to the procedure so granted that body by Chapter V, Section 1 (A) of the A.S. By-Laws which reads:

The By-Laws of the Associated Students may be amended by a two-thirds (2/3) vote of the Associated Students Senate. The voting on an amendment shall take place at the next regular or special meeting of the Senate, providing a minimum of one (1) week shall have elapsed

In challenging the legality of the adoption of By-Laws Amendment Number Seven, the Plaintiff brings the following two questions before this court:

- (1) Did the Senate allow the minimum one week period to elapse prior to voting on By-Laws Amendment Number Seven?
- (2) Does the phrase "a two-thirds vote of the Associated Students Senate" in the above section mean a two-thirds vote of the entire voting membership of the Senate or a two-thirds vote of only those Senators present and voting?

Ample testimony has been presented to establish that the Senate did in fact allow the minimum one week interval to elapse between the introduction of and the voting on By-Laws Amendment Number Seven. The question remaining is how to construe the phrase "a two-thirds vote of the Associated Students Senate."

The Plaintiff contends that the intention of Chapter V, Section 1 (A) is to require a two-thirds vote of the entire voting membership of the Senate for passage of a By-laws Amendment. The Plaintiff established that the opposing interpretation would render a two-thirds vote a relative number of votes to be determined by the number of Senators present and voting. The consequence of this opposing interpretation would be to allow as few as seven (7) votes, in a body of nineteen (19) members, to pass a By-laws Amendment. (That is, if a two-thirds vote is to be determined on the basis of the number of votes cast, with only a minimum quorum of ten (10) members voting, it is possible for the Senate to pass a By-laws Amendment with seven (7) favorable votes, i. e. a two-thirds vote of the ten voting members.) It is argued that the framers did not intend to allow any measure to be passed by less than an absolute majority vote. For this reason, a two-thirds vote is an absolute number of votes to be considered as a two-thirds vote of the entire voting membership of the Senate (i. e., thirteen (13) votes in a body of nineteen (19) total voting members).

In this case, with a vote of eleven to three (11-3) in favor of passage of the By-laws Amendment, using the relative scale, the measure passed by one (1) vote (i. e., with a two-thirds vote of the votes cast constituting ten (10) votes). On the absolute scale, however, the measure failed by two (2) votes, as contended by the Plaintiff, since the votes in favor were two (2) votes short of two-thirds of the entire voting membership.

The Defendant responded by first establishing that the parliamentary authority for all operations of the Associated Students is Sturgis' Standard Code of Parliamentary Procedure as is set forth in Article VII of the A.S. Constitution. Next, that a two-thirds vote is defined on page fifty-seven of Sturgis' as meaning two-thirds of the legal votes cast unless qualified in some way. A look at the controlling element in this case (Chapter V, Section 1 (A) of the A.S. By-laws, supra) reveals no such qualification to exist except as to identify the body to which the voting is concerned (i. e., the A.S. Senate). Furthermore, the Defendant established that where it is intended that a departure be made from the Sturgis' definition in favor of the Plaintiff's definition of a two-thirds vote, such an intention is made explicitly clear by the inclusion of language that defines a two-thirds vote as meaning two-thirds of the entire voting membership. The following examples were cited: Article I, Section 7 (C) of the A.S. Constitution, allows the Senate to override the veto of the President only by a two-thirds vote of its total voting membership; Chapter I, Section 1 (A) of the A.S. By-laws, allows the Senate

to cancel any of its regular meetings only by a two-thirds vote of the entire Senate; and Rule 1(c) of the Senate Rules of Procedure, allows the Senate to cancel any of its regular sessions only by a two-thirds vote of the total voting membership. Thus, the Defendant argued that since no such explicit qualification exists in Chapter II, Section 1(A) of the A.S. By-laws to establish a departure from the Sturgis' definition, that none exists or was intended to exist.

The Defendant further argued that a ruling for the Plaintiff would impose an extreme hardship on the Associated Students since such legislation which was passed, but not by a vote of the entire membership of the Senate, would be invalidated. Also that it would be difficult to maintain the attendance of the entire Senate in order to pass legislation.

This court unanimously finds with the Defendant that the phrase "a two-thirds vote of the A.S. Senate" means a two-thirds vote of the members present and voting in accordance with the Sturgis' definition; with the absence of any qualifications to the contrary in the language of Article II, Section 1(A) of the A.S. By-laws, this is the meaning to be given to the contested phrase of that Section.

The text reveals that the intent of the framers of the A.S. By-laws is that the actual number of votes cast, rather than the total potential number of votes, would define the number of votes of which two-thirds is necessary for passage of a By-laws Amendment. Majority rule is not abandoned, for two-thirds is certainly more than a majority of those voting. Furthermore, the Sturgis' definition, which is necessarily the intended meaning, is not the contrary of the Plaintiff's definition. Rather, the former definition includes the latter, for if all the Senators had attended and voted at the meeting, the Plaintiff's demands would have been fulfilled. What the Plaintiff's case reduces to is that which ought to be as opposed to that which is. The framers of the A.S. By-laws ought to have construed the two-thirds requirement to include all the members of the Senate, but they did not. All the Senators ought to have attended the meeting and voted on the measure, but they did not.

It must be assumed that what the framers of the A.S. By-laws left for posterity, the language of the text, must reveal what they intended. This court can only rule on what the intention is, not what it ought to be. And, it certainly is beyond the power of this court to make any changes in the language of the text. Therefore, this court is obliged to reach the decision it has.

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However, this court refuses to recognize the Defendant's contention that the doctrine of hardship is applicable to this case.

Therefore, in keeping with this decision, the court finds that By-Laws Amendment Number Seven was properly adopted by the Associated Students Senate.

Michael Hanna
Justice M. Hanna

Concurring: *Barnes Kaeller*
Chief Justice B. Kaeller

Linda Hallenbeck
Justice L. Hallenbeck

